

DOCKET NO. X07 HHD-CV-14-5037565-S

CONNECTICUT COALITION FOR	:	SUPERIOR COURT
JUSTICE IN EDUCATION	:	
FUNDING, INC., et al.	:	COMPLEX LITIGATION DOCKET
Plaintiffs	:	
	:	
v.	:	AT HARTFORD
	:	
RELL, M. JODI et al.	:	
Defendants	:	JANUARY 5, 2016

PLAINTIFFS' PRELIMINARY FINDINGS OF FACTS AND CONCLUSIONS OF LAW

PROPOSED FINDINGS OF FACT

Overview

1. Low-wealth, high-poverty districts – including Bridgeport, Danbury, East Hartford, New Britain, New London, and Windham – lack critical educational resources needed in order to prepare their students to participate in democratic institutions, to obtain productive employment or otherwise contribute to Connecticut's economy, or to progress to higher education.

2. Disadvantaged subgroups of students – including students living in poverty, racial minorities, students with disabilities, and students with limited English proficiency (“Subgroups”) – are not being provided critical educational resources needed to prepare them to participate in democratic institutions, to obtain productive employment or otherwise contribute to Connecticut's economy, or to progress to higher education.

3. The educational opportunities available to students in low-wealth, high-poverty districts – including Bridgeport, Danbury, East Hartford, New Britain, New London, and

Windham – are significantly unequal and inequitable when compared to students in wealthier, lower-poverty districts.

State funding for education

4. With respect to recent and current funding of education in Connecticut, no State agency or department has evaluated the actual cost of adequately educating students or the costs of additional resources needed to provide adequate educational opportunities to students in low-wealth, high-poverty districts or disadvantaged and underserved Subgroups.

5. The Education Cost Sharing (“ECS”) grant – which is the primary means of State funding for education – is based on a formula that is arbitrary, is not the result of a rational design process, and is not based on the actual cost to educate students in Connecticut.

6. The State does not distribute educational aid according to the cost sharing formula that it has set and has routinely taken steps that have prevented towns from receiving fully funded grants, including enacting caps on allowable increases in ECS grants, awarding grants based on a percentage of the difference between towns’ prior year grants and what would be their fully funded grants under the ECS formula, and freezing ECS grants at prior year levels.

7. The ECS appropriations increases for Fiscal Years 2016 and 2017 are not based on calculations derived from the ECS formula, are nominal and will not result in full funding of the ECS grant.

Inputs

8. Low-wealth, high-poverty districts – including Bridgeport, Danbury, East Hartford, New Britain, New London, and Windham – are unable to provide all students with the resources necessary to provide an adequate and equitable education because of insufficient funding.

9. Because of insufficient funding, low-wealth, high-poverty districts are unable to provide the necessary level of staff to meet the basic educational needs of all of their students, including sufficient and appropriate general education teachers, special education teachers, social workers, guidance counselors, psychologists, academic interventionists, tutors, academic coaches, paraprofessionals, administrative positions, and others.

10. Because of insufficient funding, low-wealth, high-poverty districts are unable to provide necessary programs and services to meet the needs of all of their students, including sufficient and appropriate academic intervention services, academic enrichment programs, music, art, and foreign language courses, extended day programs, summer and afterschool programs, mental health services, services for students with disabilities, services for English Learners, and others.

11. Because of insufficient funding, low-wealth, high-poverty districts are unable to provide the level of physical resources needed to meet the needs of all their students, including but not limited to sufficient and appropriate technology, instructional materials, textbooks, and supplies.

Special Education

12. Students with disabilities require additional resources to meet their educational needs and receive adequate and equitable educational opportunities.

13. Providing students with disabilities with the educational resources to meet their needs often requires substantial expenditure over and above those needed for students without disabilities.

14. State funding for special education is insufficient for low-wealth, high-poverty districts to meet the needs of students with disabilities and to provide those students with adequate and equitable educational opportunities.

English Learners

15. English Learners (also known as “ELs,” Limited English Proficient Students, or English Language Learners) require sufficient and appropriate educational resources to learn English and permit them to access their academic curriculum – resources that include education in bilingual classrooms, sheltered content instruction in general education classrooms (and the training necessary to provide that instruction), paraprofessionals, additional written resources, translation services for families, welcome/transition services for new immigrants, and other appropriate resources.

16. State and federal funding for the benefit of ELs is insufficient to allow low-wealth, high-poverty districts to meet the educational needs of ELs and provide them with adequate and equitable educational opportunities.

Pre-K

17. Early childhood education for 3- and 4-year olds (also known as pre-kindergarten, or “pre-K”) is an important component of providing adequate and equitable educational opportunities.

18. Access to pre-K, particularly high-quality pre-K, better prepares students for success in kindergarten and their subsequent education, and high-quality pre-K is particularly important for meeting the educational needs of low-income students and providing those students with adequate and equitable opportunities.

19. The term “achievement gaps” refers to gaps in educational outcomes between sub-groups of students, such as between white students and students of color, or between low-income and non-low-income students.

20. Increased access to high-quality pre-K is a critical means of increasing educational achievement among low-income and other high-needs students, and to close the achievement gaps between disadvantaged and underserved Subgroups and their counterparts.

21. According to the state’s own calculations, in the highest need districts alone, there is a need for approximately 9,000 additional pre-K slots in order to provide access to pre-K for 3- and 4-year olds who lack a pre-K experience.

22. While over 95% of kindergartners in Connecticut’s wealthiest districts have attended pre-K, the percentages of those kindergartners in Connecticut’s lower-wealth districts who attended pre-K are generally significantly lower (in the 50-70% range).

Outputs

23. The lack of adequate resources in low-wealth, high-poverty districts has led to materially lower outputs, as measured by test scores, high school graduation rates, college attendance rates, and other measures of educational performance.

24. Several standardized tests include baseline achievement levels that indicate college and career readiness, such as the Smarter Balanced Assessment which is Connecticut’s current statewide assessment; Connecticut’s legacy statewide assessments, the Connecticut Academic Performance Test (“CAPT”) and Connecticut Mastery Test (“CMT”); and the National Assessment of Educational Progress (“NAEP”), which is a nationwide assessment. For every one of these tests, Connecticut has significant achievement gaps.

25. By any measure, Connecticut's achievement gaps in performance, between low-income and non-low income, black and white, and Hispanic and white students, are among the largest in the nation.

26. As reflected in the table below, on the Smarter Balanced assessment, the percentage of students that fail to meet state set standards in low-wealth, high-poverty districts is significantly higher than in districts with higher wealth and lower rates of poverty.

District	Did Not Meet Achievement Level - Mathematics	Did not Meet Achievement Level - English Language Arts
Darien	24.1%	14.7%
New Canaan	25.9%	17.8%
Ridgefield	33.8%	18.0%
Weston	30.0%	21.6%
Westport	27.2%	14.9%
Wilton	42.7%	26.4%
Greenwich	36.0%	22.2%
Bethel	58.6%	32.0%
Danbury	70.2%	52.3%
East Hartford	83.2%	66.8%
Bridgeport	90.9%	76.2%
New Britain	85.4%	77.0%
New London	81.3%	69.4%
Windham	81.9%	72.4%

27. As reflected in the table below, on the Smarter Balanced assessment, Connecticut's students who are low-income, black, Hispanic, or ELs fail to meet state set standards at a significantly higher rate than their counterparts who are not in these subgroups.

Group	Did not Meet Achievement Level Mathematics	Did not Meet Achievement Level English Language Arts
All Students	60.9%	44.6%
Free Lunch	84.6%	70.0%

Group	Did not Meet Achievement Level Mathematics	Did not Meet Achievement Level English Language Arts
Reduced Lunch	73.6%	54.4%
Not Eligible Lunch	47.7%	30.8%
EL	93.0%	89.9%
Special Education	91.8%	85.4%
White	49.7%	32.7%
Black	86.1%	69.7%
Hispanic	82.7%	67.2%

28. As reflected in the table below, there are a significant number of students in low-wealth, high-poverty districts performing at the lowest level of achievement, which occurs far less often than in higher-wealth, lower-poverty districts.

District	2014-15 SBAC ELA Percent at Level 1: Does not meet achievement level	2014-15 SBAC Math Level 1: Does not meet achievement level
Darien	4%	7%
New Canaan	4%	7%
Ridgefield	5%	10%
Weston	6%	8%
Westport	4%	9%
Wilton	10%	14%
Greenwich	8%	14%
Bethel	11%	24%
Danbury	25%	37%
East Hartford	39%	54%
Bridgeport	49%	67%
New Britain	53%	61%
New London	39%	52%
Windham	45%	54%
State	21.9%	32.4%

29. High-needs students and students in low-wealth districts are considerably less likely to graduate from high school than their counterparts with lower educational needs or in high-wealth districts.

30. Gaps in the graduation rate between high-needs students in low-wealth districts and their lower needs counterparts in higher-wealth districts have persisted for years, as reflected in the below table which sets forth the four-year cohort graduation rate of the listed districts for the classes of 2012, 2013 and 2014.

(A) District	(B) Cohort 2012	(C) Cohort 2013	(D) Cohort 2014
State	84.8%	85.5%	87.0%
Darien	96.5%	97.2%	96.7%
New Canaan	97.0%	97.6%	98.4%
Ridgefield	98.2%	96.1%	97.6%
Weston	99.5%	99.0%	97.2%
Westport	97.9%	98.7%	97.8%
Wilton	98.1%	96.0%	97.0%
Greenwich	92.3%	94.8%	95.1%
Bethel	94.1%	92.7%	92.6%
Danbury	76.8%	75.5%	78.1%
East Hartford	76.6%	77.7%	78.3%
Bridgeport	66.3%	67.3%	71.5%
New Britain	60.5%	60.9%	63.6%
New London	61.9%	64.2%	71.1%
Windham	70.2%	75.3%	73.2%

31. College and career readiness involves multiple components that comprise what a modern education must provide: core academic skills and the ability to apply those skills to concrete situations; employability skills (such as critical thinking and responsibility); and technical, job-specific skills related to a specific career pathway.

32. Large numbers of Connecticut students are not being provided with the resources needed to become college and career ready, particularly students in low-wealth and high-poverty districts.

33. Few high-needs students, including students that are in poverty, special education students, ELs, and students in low-wealth districts score at a level on State assessments that indicate they are on track for college and career readiness.

34. There are sizeable gaps in college and career readiness between high-needs students and students in low-wealth districts and their lower-needs counterparts in higher-wealth districts.

35. High-needs students and students in low-wealth districts have low achievement levels and sizeable gaps exist between them and their lower-needs counterparts in higher-wealth districts with respect to other measures of college and career readiness, including SAT scores, Advanced Placement (“AP”) exams, college attendance, and the need for remedial courses for students who do attend college.

Reforms

36. Connecticut’s efforts at educational reform since 2012 have not been sufficient to meet all students’ needs and to provide all students with adequate and substantially equal educational opportunities.

37. Changes to the ECS formula that have occurred since 2012 have not been based on a rational analysis of the cost to educate students or of the resources required to provide an adequate education, but instead have been modifications of a fundamentally flawed formula which have not addressed the fundamental deficiencies in the formula.

38. Rather than being monies that are in addition to the ECS grant, an Alliance grant constitutes a portion of an Alliance District's ECS grant, the receipt of which is made conditional on the Commissioner's approval of an Alliance District plan.

39. The Alliance District program provides an arbitrary amount of funding to certain districts that is not based on the resource levels necessary to meet the needs of students in those districts. Although the Commissioner's Network program provides additional resources and additional oversight to certain low-performing schools, the funding provided through the Commissioner's Network is not based on the resource levels necessary to meet the needs of students in those schools.

40. The number of schools participating in the Commissioner's Network is a fraction of the number of schools in Connecticut, or even in the Alliance Districts, that are in critical need of additional resources to meet the needs of their students.

Unequal Educational Opportunities

41. The breadth and quality of education available to students in low-income, high-poverty districts is significantly lower than the breadth and quality of educational opportunities available to students in higher-wealth districts.

42. Because of insufficient funding, low-income, high-poverty districts tend to have higher class sizes, fewer support staff, fewer experienced teachers, less access to materials and technology than their higher-wealth counterparts.

43. As reflected in the table below, students in low-income, high-poverty districts – despite demonstrably greater needs—have significantly fewer school psychologists per student.

(A) District	(B) 2012-13 Enrollment	(C) 2012-13 K-12 Students with Disabilities	(D) 2012-13 FTE School Psychologist s	(B)/(D)	(C)/(D)
Darien	4840	583	12	403.3	48.6
New Canaan	4203	384	8.5	494.5	45.2
Ridgefield	5268	446	11	478.9	40.5
Westport	5795	577	16.8	344.9	34.3
Weston	2419	212	5	483.8	42.4
Wilton	4289	499	8.2	523.0	60.9
Greenwich	8842	868	24	368.4	36.2
Bethel	2975	319	2	1,487.5	159.5
Danbury	10447	1122	14.3	730.6	78.5
East Hartford	7033	1089	14	502.4	77.8
Bridgeport	20149	2785	33	610.6	84.4
New Britain	10204	1608	16	637.8	100.5
New London	3049	623	5.6	544.5	111.3
Windham	3189	508	4	797.3	127.0

44. As reflected in the table below, schools in low-income, high-poverty districts – despite demonstrably greater needs – have significantly fewer guidance counselors per student.

(A) District	(B) High School	(C) Enrollment 2012-2013	(D) Full Time Equivalent Guidance Counselors 2012-13	(C)/(D) Students Per Guidance Counselor 2012-13
Darien	Darien HS	1329	7.2	184.6
New Canaan	New Canaan HS	1275	7.6	167.8
Ridgefield	Ridgefield HS	1759	8.6	204.5
Westport	Staples HS	1879	10.5	179.0
Weston	Weston HS	777	5	155.4
Wilton	Wilton HS	1309	7	187.0
Greenwich	Greenwich HS	2678	18	148.8
Bethel	Bethel HS	959	3.9	245.9

(A) District	(B) High School	(C) Enrollment 2012-2013	(D) Full Time Equivalent Guidance Counselors 2012-13	(C)/(D) Students Per Guidance Counselor 2012-13
Danbury	Danbury HS	2887	10.6	272.4
East Hartford	East Hartford HS	1641	8	205.1
Bridgeport	Bassick HS	1177	4	294.3
Bridgeport	Central HS	2140	8	267.5
Bridgeport	Harding HS	1297	5	259.4
New Britain	New Britain HS	2530	12	210.8
New London	New London HS	933	3	311.0
Windham	Windham HS	673	3	224.3

PROPOSED CONCLUSIONS OF LAW

Constitutional Interpretation

1. The Connecticut Constitution guarantees all Connecticut public school students adequate and substantially equal educational opportunities.
2. Article Eighth §1 of the Connecticut State Constitution provides: “There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.”
3. “Appropriate legislation” to implement the state’s constitutional duties under Article Eighth §1 includes appropriate school financing legislation. *See Horton v. Meskill*, 172 Conn. 615, 649 (“*Horton I*”).
4. According to the Connecticut State Supreme Court, Article Eighth § 1 “guarantees Connecticut’s public school students educational standards and resources suitable to

participate in democratic institutions, and to prepare them to attain productive employment and otherwise to contribute to the state's economy, or to progress on to higher education.” *CCJEF v. Rell*, 295 Conn. 240, 244-45, 314-15 (2010) (plurality opinion); *see also Pereira v. State Bd. of Educ.*, 304 Conn 1, 37 n. 28 (2012); *State v. Rizzo*, 303 Conn. 71, 184 n.81 (2011); *Lestorti v. DeLeo*, 298 Conn. 466,477 n.11 (2010); *Vincent Metro, LLC v. Yah Realty, LLC*, 297 Conn. 489, 495 (2010); *Bysiewicz v. Dinardo*, 298 Conn. 748, 788 n.38 (2010).

5. The level and type of educational resources necessary to provide adequate and substantially equal educational opportunities is dependent on the needs of the students.

6. Students in low-wealth, high-poverty districts containing high concentrations of students in high-need Subgroups require additional educational resources compared to their peers in order to receive adequate educational opportunities

7. Article First §1 of the Connecticut State Constitution provides: “All men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community.”

8. Article First §20 of the Connecticut State Constitution provides: “No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his civil or political rights because of religion, race, color, ancestry or national origin.”

9. It is well-established that “[t]he state must provide a substantially equal educational opportunity to its youth in its free public elementary and secondary schools.”

Horton v. Meskill, 172 Conn. 615, 649 (1977) (“*Horton I*”).

10. The state of Connecticut has an affirmative obligation to ensure that public school students receive both adequate and equitable educational opportunities. *Cf. Sheff v. O’Neill*, 238

Conn. 1, 29-30 (holding that the legislature had affirmative responsibility to remedy segregation in public schools); *Horton v. Meskill*, 195 Conn. 24, 38–39 (1985) (“*Horton III*”) (noting legislature's affirmative constitutional obligation to provide all of the state’s schoolchildren with a substantially equal educational opportunity).

The Role of the State Board of Education

11. The State Board of Education has general supervision and control of the “educational interests of the state,” which include preschool, elementary and secondary education, special education, vocational education and adult education. Conn. Gen. Stat. §10-4(a).

12. The “educational interests of the state” include providing each child with “equal opportunity to receive a suitable program of educational experiences.” Conn. Gen. Stat. §10-4a.

13. Local school boards in Connecticut are agencies of the State.

14. The State has delegated the authority to operate its public schools to local school districts and Boards of Education.

15. A local board of education must maintain “good” public elementary and secondary schools, implement the educational interests of the state, provide all children with “as nearly equal advantages as may be practicable,” and “provide an appropriate learning environment for all its students which includes (1) adequate instructional books, supplies, materials, equipment, staffing, facilities and technology, (2) equitable allocation of resources among its schools, (3) proper maintenance of facilities, and (4) a safe school setting.” Conn. Gen. Stat. § 10-220.

The Role of the Judiciary and the Strict Scrutiny

16. “Just as the legislature has a constitutional duty to fulfill its affirmative obligation to the children who attend the state's public elementary and secondary schools, so the judiciary has a constitutional duty to review whether the legislature has fulfilled its obligation.” *CCJEF v. Rell*, 295 Conn. at 258; *Sheff v. O'Neill*, 238 Conn. 1, 13, (“[I]t is the role and the duty of the judiciary to determine whether the legislature has fulfilled its affirmative obligations within constitutional principles.”)

17. Under article Eighth, § 1, of the Connecticut constitution, “the right to education is so basic and fundamental that any infringement of that right must be strictly scrutinized.” *CCJEF v. Rell*, 295 Conn. at 298, citing *Horton I*, 172 Conn. at 646.

18. Alleged violations of the fundamental right to a substantially equal education must be strictly scrutinized using a three-part framework. *Sheff v. O'Neill*, 238 Conn. 1, 37 (1996).

19. Plaintiffs first must “make a prima facie showing that the disparities . . . are more than de minimis in that the disparities continue to jeopardize the plaintiffs’ fundamental right to education.” *Id.* (quoting *Horton v. Meskill*, 195 Conn. 24, 38 (1985) (“*Horton III*”).

20. Once Plaintiffs have made the showing, the burden shifts to the state “to justify these disparities as incident to the advancement of a legitimate state policy. If the State’s justification is acceptable, the State must further demonstrate that the continuing disparities are nevertheless not so great as to be unconstitutional.” *Id.* (quoting *Horton III*, 195 Conn. at 38).

21. The burden shifting framework under *Sheff* and *Horton* does not apply to Plaintiff’s adequacy claim. All public school students are entitled to adequate educational opportunities or a minimal level of quality education, and violations therefore cannot be categorized as “de minimus.”

22. To avoid liability, the State must prove a compelling governmental interest in structuring and operating a system that results in inadequate educational opportunities for its public school students.

Constitutional Standard for Adequacy

23. To satisfy the constitutional standard, the State must ensure that all students have objectively meaningful opportunities to an “education suitable to give them the opportunity to be responsible citizens able to participate fully in democratic institutions, such as jury service and voting.” *CCJEF v. Rell*, 295 Conn. at 314-15.

24. Specific educational inputs or instrumentalities suitable to achieve a minimum level of education may well change over time, as a constitutionally adequate public education is not a static concept removed from the demands of an evolving world. *Id.* at 317.

25. To satisfy the constitutional standard, the State must provide all students with objectively meaningful opportunities to be “prepared to progress to institutions of higher education, or attain productive employment and otherwise contribute to the state’s economy.” *Id.*

26. The standard of educational adequacy that is required by the constitution must be met with respect to all children in the State of Connecticut, including those who face serious obstacles in benefitting from it as well as those who are readily equipped to benefit. *CCJEF v. Rell*, 395 Conn. at 291 (Schaller, J. concurring).

27. A meaningful opportunity to receive the benefits of an adequate education requires that student needs are taken into account.

28. Students in poverty, English Learners, Special Education students, and minority students are not receiving meaningful opportunities to receive an adequate education because

they are not being provided the resources they need to be able to participate in democratic institutions, progress to higher education, or to obtain productive employment or otherwise contribute to Connecticut's economy.

29. Low-wealth, high-poverty districts often fail to provide the “essential components” of a constitutionally adequate education, which include but are not limited to: (1) minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn; (2) minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks; (3) minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies; and (4) sufficient personnel adequately trained to teach in those areas. *CCJEF v. Rell*, 395 Conn. at 316.

30. Because of the lack of State resources to meet student needs, substantial numbers of students are not being provided meaningful opportunities to receive an adequate and equitable education.

Connecticut's System of Education Finance is Unconstitutional

31. The current public school finance system is unconstitutional because it is not structured, operated, and funded in a manner that ensures that all public school students receive adequate and equitable educational opportunities.

32. A constitutionally adequate state education funding system must ensure that districts have resources sufficient to provide all schoolchildren, including students of disadvantaged subgroups, with a meaningful opportunity to acquire an adequate and equitable education.

33. Because the State has never made any effort to determine what it would cost to adequately provide meaningful opportunities for all students to obtain an adequate and equitable education, and instead uses a funding formula based on arbitrary variables and unconnected to the actual cost of educating students in Connecticut as its major distribution system, Connecticut's system is structured, operated, and funded in an arbitrary and irrational manner that cannot withstand constitutional scrutiny.

34. The State's continued reliance on local property taxes (which remain largely disparate across Connecticut) to fund education has resulted in the inadequate and inequitable distribution of resources to Connecticut's students.

35. Low-wealth, high-poverty districts are unable to provide their students with adequate and substantially equal educational opportunities as a result of the state's current education finance framework.

36. The Plaintiffs have established a systemic violation of state constitutional standards governing the delivery of education to the students of Connecticut, and this Court declares that the present Connecticut school finance system is in violation of Article Eighth §1 and Article First §§ 1 & 20.

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CERTIFICATION

I hereby certify that on January 5, 2016, a true and accurate copy of the foregoing Plaintiffs' Preliminary Findings of Facts and Conclusions of Law was sent via electronic mail to the following counsel of record:

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